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6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
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10 DAMEL JEFFRIES,

11 Plaintiff,

Case No. CV 17-0424-AB (KK)

12 v.

13 LOS ANGELES SHERIFF
14 DEPARTMENT, ET AL.,

15 Defendants.

ORDER DISMISSING FIRST
AMENDED COMPLAINT WITH
LEAVE TO AMEND

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17 I.

18 INTRODUCTION

19 Plaintiff Damel Jeffries (“Plaintiff”), proceeding pro se and in forma
20 pauperis, has filed a First Amended Complaint (“FAC”) pursuant to 42 U.S.C. §
21 1983 (“Section 1983”) alleging violations of his Eighth Amendment right based on
22 excessive force. Plaintiff appears to be suing defendant Los Angeles Sheriff
23 Department, John Doe 1, and John Doe 2 (“Defendants”) in their individual
24 capacity. As discussed below, the Court dismisses the FAC with leave to amend
25 for failure to state a claim.

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III.

PROCEDURAL HISTORY

On January 10, 2017, Plaintiff, who is in the custody of the California Department of Corrections and Rehabilitation at the Wasco State Prison, constructively filed¹ a Complaint alleging custody staff employed by the Los Angeles Sheriff Department used excessive force while Plaintiff was housed at Twin Towers Correctional Facility under suicide watch. ECF Docket No. (“Dkt.”) 1, Compl.

On January 25, 2017, the Court dismissed the complaint with leave to amend for failure to state a claim. Dkt. 6.

On February 10, 2017, Plaintiff constructively filed the instant FAC against Los Angeles Sheriff Department, John Doe 1, and John Doe 2.² Dkt. 8, FAC. Plaintiff alleges John Does 1 and 2 used excessive force against Plaintiff in violation of the Eighth Amendment. *Id.* Plaintiff additionally alleges defendant Los Angeles County Sheriff Department is liable for the actions of its officers when it failed “to uphold [its] legal duty of care.” *Id.* at 5.

III.

ALLEGATIONS IN FAC

On May 9, 2016, during “pill call”, Plaintiff alleges he “picked up an empty orange juice carton and reached back through the tray slot with [his] right hand to ask for more ice.” Declaration of Damel Jeffries (“Jeffries Decl.”), Dkt. 8 at 3. Plaintiff claims, at that moment, he heard one of the staff nurses say to another

¹ Under the “mailbox rule,” when a pro se inmate gives prison authorities a pleading to mail to court, the court deems the pleading constructively “filed” on the date it is signed. Roberts v. Marshall, 627 F.3d 768, 770 n.1 (9th Cir. 2010) (citation omitted); Douglas v. Noelle, 567 F.3d 1103, 1107 (9th Cir. 2009) (stating the “mailbox rule applies to § 1983 suits filed by pro se prisoners”).

² In Plaintiff's FAC, he refers to two individuals allegedly employed by the Los Angeles Sheriff's Department as John Doe 1 and John Doe 2. FAC at 5. John Doe 1 is referred to as "custody assistant" and John Doe 2 is referred to as "deputy sheriff" throughout Plaintiff's declaration filed in support of the FAC. See Jeffries Decl.

1 nurse, “I don’t know why you’re doing this, you shouldn’t give that punk-ass his
 2 meds.” Id. According to Plaintiff, “[t]he custody assistant and deputy sheriff
 3 seemed to react to the comment and [his] request for more ice.” Id. at 4.
 4 Consequently, the custody assistant came over and “closed the tray slot door on
 5 [Plaintiff’s] arm.” Id. Additionally, the deputy sheriff “grabbed onto [Plaintiff’s]
 6 wrist and forearm and started pushing down” as if “he was trying to break it.” Id.
 7 The deputy sheriff began “sliding [Plaintiff’s] arm back and forth in the tray slot
 8 like he wanted to saw it off.” Id. Both the deputy sheriff and the custody assistant
 9 held onto the tray slot to keep it closed on Plaintiff’s arm. Id.

10 Plaintiff was able to release his right arm from the tray slot door; however,
 11 the deputy sheriff “grabbed onto [Plaintiff’s] left arm . . . [and] again began to
 12 assault [Plaintiff] by twisting, an[d] sliding [his] arm in tray slot.” Id. at 5. The
 13 custody assistant then “pulled out a flashlight . . . [and] used the end of it as a
 14 weapon to assault [Plaintiff’s] left hand and wrist.” Id. at 5-6. Plaintiff was able to
 15 release his left arm, “but then the deputy sheriff and custody assistant trapped
 16 [Plaintiff’s] fingers of [his] right hand in the tray slot.” Id. at 6. As Plaintiff
 17 attempted to release his right hand, the custody assistant and deputy sheriff closed
 18 the tray slot door, causing Plaintiff’s “left forearm [to become] pinched in the tray
 19 slot.” Id.

20 Plaintiff claims the Custody Staff stated the use of force was necessary
 21 because (1) Plaintiff “tried to gas [Custody Staff]”; and (2) Plaintiff “was holding
 22 the tray slot hostage.” Id. at 8-9. Plaintiff claims neither of these statements are
 23 true. Id. As a result of the alleged use of force, Plaintiff claims he “continues to
 24 experience numbness and pain” and has not “received any medical attention for
 25 the injuries” despite repeated requests. Id. at 10. Plaintiff is seeking compensatory
 26 damages, as well as damages for pain, suffering, and psychological distress, in the
 27 amount of \$450,000. FAC at 6.

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1 **IV.**2 **STANDARD OF REVIEW**

3 As Plaintiff is proceeding in forma pauperis, the Court must screen the FAC
 4 and is required to dismiss the case at any time if it concludes the action is frivolous
 5 or malicious, fails to state a claim on which relief may be granted, or seeks
 6 monetary relief against a defendant who is immune from such relief. 28 U.S.C. §
 7 1915(e)(2)(B); 28 U.S.C. § 1915A(b); see Barren v. Harrington, 152 F.3d 1193, 1194
 8 (9th Cir. 1998).

9 In determining whether a complaint fails to state a claim for screening
 10 purposes, the Court applies the same pleading standard from Rule 8 of the Federal
 11 Rules of Civil Procedure (“Rule 8”) as it would when evaluating a motion to
 12 dismiss under Federal Rule of Civil Procedure 12(b)(6). See Watison v. Carter,
 13 668 F.3d 1108, 1112 (9th Cir. 2012). Under Rule 8(a), a complaint must contain a
 14 “short and plain statement of the claim showing that the pleader is entitled to
 15 relief.” Fed. R. Civ. P. 8(a)(2).

16 A complaint may be dismissed for failure to state a claim “where there is no
 17 cognizable legal theory or an absence of sufficient facts alleged to support a
 18 cognizable legal theory.” Zamani v. Carnes, 491 F.3d 990, 996 (9th Cir. 2007)
 19 (citation omitted). In considering whether a complaint states a claim, a court must
 20 accept as true all of the material factual allegations in it. Hamilton v. Brown, 630
 21 F.3d 889, 892-93 (9th Cir. 2011). However, the court need not accept as true
 22 “allegations that are merely conclusory, unwarranted deductions of fact, or
 23 unreasonable inferences.” In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th
 24 Cir. 2008) (citation omitted). Although a complaint need not include detailed
 25 factual allegations, it “must contain sufficient factual matter, accepted as true, to
 26 ‘state a claim to relief that is plausible on its face.’” Cook v. Brewer, 637 F.3d
 27 1002, 1004 (9th Cir. 2011) (citing Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct.
 28 1937, 173 L. Ed. 2d 868 (2009)). A claim is facially plausible when it “allows the

court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citation omitted).

3 “A document filed pro se is to be liberally construed, and a pro se complaint,
4 however inartfully pleaded, must be held to less stringent standards than formal
5 pleadings drafted by lawyers.” Woods v. Carey, 525 F.3d 886, 889-90 (9th Cir.
6 2008) (citations and internal quotation marks omitted). “[W]e have an obligation
7 where the p[laintiff] is pro se, particularly in civil rights cases, to construe the
8 pleadings liberally and to afford the p[laintiff] the benefit of any doubt.” Akhtar v.
9 Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012) (citation omitted).

If the court finds the complaint should be dismissed for failure to state a claim, the court has discretion to dismiss with or without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000). Leave to amend should be granted if it appears possible the defects in the complaint could be corrected, especially if the plaintiff is pro se. Id. at 1130-31; see also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995). However, if, after careful consideration, it is clear a complaint cannot be cured by amendment, the court may dismiss without leave to amend. Cato, 70 F.3d at 1107-11; see also Moss v. U.S. Secret Serv., 572 F.3d 962, 972 (9th Cir. 2009).

V.

DISCUSSION

21 A. PLAINTIFF FAILS TO STATE A MONELL CLAIM AGAINST THE
22 LOS ANGELES SHERIFF DEPARTMENT

23 || (1) APPLICABLE LAW

24 Respondeat superior liability does not exist under Section 1983. Monell
25 Dep’t of Soc. Servs. of City of New York, 436 U.S. 658, 694, 98 S. Ct. 2018, 56 L.
26 Ed. 2d 611 (1978); see also City of Canton v. Harris, 489 U.S. 378, 385, 109 S. Ct.
27 1197, 103 L. Ed. 2d 412 (1989). Consequently, an entity is liable only for allegations
28 of constitutional violations that arise from an official policy or longstanding custom.

1 Id. A plaintiff must show the alleged constitutional violation was committed
2 “pursuant to a formal governmental policy or a longstanding practice or custom
3 which constitutes the standard operating procedure of the local governmental
4 entity.” Gillette v. Delmore, 979 F.2d 1342, 1346 (9th Cir. 1992) (citations and
5 internal quotation marks omitted). Proof of random acts or isolated events is
6 insufficient to establish a custom or practice. Thompson v. City of Los Angeles,
7 885 F.2d 1439, 1444 (9th Cir. 1989). Rather, a plaintiff must prove widespread,
8 systematic constitutional violations which have become the force of law. Board of
9 Cty. Comm’rs of Bryan Cty., Okl. v. Brown, 520 U.S. 397, 404, 117 S. Ct. 1382,
10 1388, 137 L. Ed. 2d 626 (1997). In addition, a plaintiff must show the policy,
11 practice or custom was “(1) the cause in fact and (2) the proximate cause of the
12 constitutional deprivation.” Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996)
13 citing Arnold v. Int’l Bus. Machines Corp., 637 F.2d 1350, 1355 (9th Cir. 1981)).

(2) ANALYSIS

15 Here, Plaintiff's Section 1983 claim against the Los Angeles Sheriff
16 Department must be dismissed because Plaintiff still has not set forth any
17 allegations identifying a policy, practice, or custom that was "(1) the cause in fact
18 and (2) the proximate cause of the constitutional deprivation." See Trevino, 99
19 F.3d at 918. Absent such allegations, the federal claim against defendant Los
20 Angeles Sheriff Department must be dismissed.

21 B. DOE DEFENDANTS

(1) APPLICABLE LAW

23 “As a general rule, the use of ‘John Doe’ to identify a defendant is not
24 favored.” Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980). “However . . . ,
25 where the identity of alleged defendants will not be known prior to the filing of a
26 complaint . . . , the plaintiff should be given an opportunity through discovery to
27 identify the unknown defendants, unless it is clear that discovery would not
28 uncover the identities, or that the complaint would be dismissed on other

1 grounds.” Id.; see also Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir.
2 1999).

3 **(2) ANALYSIS**

4 Here, Plaintiff has elected to raise an excessive force claim against John Does
5 1 and 2 in their individual capacity. Because Plaintiff is unaware of the true names
6 of the Doe defendants, Plaintiff will be given the opportunity to discover the names
7 of the Doe defendants and amend his FAC. Plaintiff is cautioned that, if he files a
8 Second Amended Complaint that fails to identify the Doe defendants, the
9 complaint will be subject to dismissal because the Court will not be able to order
10 service against defendants who are unidentified. See Augustin v. Dep’t of Public
11 Safety, 2009 WL 2591370, at *3 (D. Hawai’i Aug. 24, 2009); Williams v.
12 Schwarzenegger, 2006 WL 3486957, at *1 (E.D. Cal. Dec. 1, 2006).

13 If Plaintiff should need more time to obtain the identities of John Does 1 and
14 2, the Court will consider requests for extension of time to file the Second
15 Amended Complaint provided Plaintiff can show he is acting diligently. Plaintiff
16 may request leave to conduct limited discovery in order to discover the names of
17 the Doe defendants. However, Plaintiff is cautioned that Federal Rule of Civil
18 Procedure 45 (“Rule 45”) provides the exclusive method of discovery on non-
19 parties. In addition, a motion for issuance of a Rule 45 subpoena duces tecum
20 should be supported by clear identification of the documents sought and a showing
21 that the records are obtainable only through the identified third party. See Davis v.
22 Ramen, No. 1:06-CV-01216-AWI-SKO-PC, 2010 WL 1948560, at *1 (E.D. Cal.
23 2010).

24 **VI.**

25 **LEAVE TO FILE A SECOND AMENDED COMPLAINT**

26 For the foregoing reasons, the FAC is subject to dismissal. As the Court is
27 unable to determine whether amendment would be futile, leave to amend is
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1 granted. See Lucas v. Dep't of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per
2 curiam).

3 Accordingly, IT IS ORDERED THAT **within twenty-one (21) days** of the
4 service date of this Order, Plaintiff choose one of the following two options:

5 1. Plaintiff may file a Second Amended Complaint to attempt to cure the
6 deficiencies discussed above. The Clerk of Court is directed to mail Plaintiff a
7 blank Central District civil rights complaint form to use for filing the Second
8 Amended Complaint, which the Court encourages Plaintiff to use.

9 If Plaintiff chooses to file a Second Amended Complaint, Plaintiff must
10 clearly designate on the face of the document that it is the "Second Amended
11 Complaint," it must bear the docket number assigned to this case, and it must be
12 retyped or rewritten in its entirety, preferably on the court-approved form. Plaintiff
13 shall not include new defendants or new allegations that are not reasonably related
14 to the claims asserted in the FAC. In addition, the Second Amended Complaint
15 must be complete without reference to the FAC or any other pleading, attachment,
16 or document.

17 An amended complaint supersedes the preceding complaint. Ferdik v.
18 Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). After amendment, the Court will
19 treat all preceding complaints as nonexistent. Id. Because the Court grants
20 Plaintiff leave to amend as to all his claims raised here, any claim raised in a
21 preceding complaint is waived if it is not raised again in the Second Amended
22 Complaint. Lacey v. Maricopa Cnty., 693 F.3d 896, 928 (9th Cir. 2012).

23 2. Alternatively, Plaintiff may voluntarily dismiss the action without
24 prejudice, pursuant to Federal Rule of Civil Procedure 41(a). The Clerk of Court
25 is directed to mail Plaintiff a blank Notice of Dismissal Form, which the Court
26 encourages Plaintiff to use.

27 The Court advises Plaintiff that it generally will not be well-disposed toward
28 another dismissal with leave to amend if Plaintiff files a Second Amended

1 Complaint that continues to include claims on which relief cannot be granted. “[A]
2 district court’s discretion over amendments is especially broad ‘where the court
3 has already given a plaintiff one or more opportunities to amend his complaint.’”
4 Ismail v. County of Orange, 917 F. Supp.2d 1060, 1066 (C.D. Cal. 2012) (citations
5 omitted); see also Ferdik, 963 F.2d at 1261. Thus, **if Plaintiff files a Second
6 Amended Complaint with claims on which relief cannot be granted, the
7 Second Amended Complaint will be dismissed without leave to amend and
8 with prejudice.**

9 **Plaintiff is explicitly cautioned that failure to timely file a Second
10 Amended Complaint will result in this action being dismissed with prejudice
11 for failure to state a claim, prosecute and/or obey Court orders pursuant to
12 Federal Rule of Civil Procedure 41(b).**

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14 Dated: March 02, 2017



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16 HONORABLE KENLY KIYA KATO
United States Magistrate Judge
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